



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 1, 2019

Stephanie A. Servoss
Clerk of the Court
United States Tax Court
400 Second Street, NW, Room 111
Washington, DC 20217

Reference: Interim and Proposed Amendments to the Tax Court Rules
of Practice and Procedure

Dear Ms. Servoss:

On behalf of the IRS Office of Chief Counsel, thank you for the opportunity to comment on the interim and proposed amendments to the Tax Court Rules of Practice and Procedure, announced by press release dated December 19, 2018. The interim and proposed amendments affect Title XXIV.A (Rules 255.1-255.7) of the Court's Rules.

Title XXIV.A Partnership Actions under BBA Section 1101

Rule 255.2. Content of Petition

Rule 255.2(b) specifies the required content of a petition in a BBA partnership action. Under Rule 255.2(b)(5), the petition must contain items including ". . . any proposed modification(s) of the imputed underpayment to which the Commissioner did not consent."

Under section 6225(c)(8), any modification of the imputed underpayment shall be made only upon approval of such modification by the Secretary. Accordingly, we recommend that Rule 255.2(b)(5) be revised to provide that the petition should contain "any proposed modification(s) of the imputed underpayment that were not approved by the Commissioner" instead of "any proposed modification(s) of the imputed underpayment to which the Commissioner did not consent" in order to more closely align the Rule with the wording of section 6225(c)(8) and to reflect that section 6225(c)(8) requires an affirmative action of approval on the part of the Commissioner, rather than consent that could be implied from inaction or omission.

In addition to the items specifically enumerated in Rule 255.2(b) to be included in the petition, we recommend that the Rule require the partnership to include a statement of whether it has made, or is in the process of making, an election under section 6226 to push out the adjustments from the reviewed year to its partners. Accordingly, we recommend the following provision be added to Rule 255.2(b):

(11) A statement setting forth whether the partnership has made, or intends to make, an election under section 6226.

Rule 255.6. Identification and Removal of Partnership Representative

Under Rule 255.6(b), if a partnership representative is removed by the Court or in situations in which the partnership representative's status is terminated for any reason, the partnership shall designate a successor partnership representative within such period as the Court may direct. Section 6223(a) states that "[e]ach partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) with substantial presence in the United States as the partnership representative who shall have the sole authority to act on behalf of the partnership under [subchapter C of Chapter 63]."

This Rule may incorrectly be read to suggest that the partnership need not fully comply with the statutory and regulatory requirements for a partnership representative. Therefore, we recommend that the Rule specifically incorporate by reference the partnership representative requirements of section 6223 and the regulations. This will ensure, for example, that any partnership representative designated by the partnership under this Rule has substantial presence in the United States and meets the other requirements of section 6223. In addition, we recommend that the Rule make clear who may make a partnership representative designation on behalf of the partnership, and limit the identity of persons who may act on behalf of the partnership in this regard to the partners of the partnership, consistent with Treas. Reg. §301.6223-1.

Although the explanation to Rule 255.6 states that the Rule does not take a position on whether the Court may appoint a partnership representative, we note that under section 6223, if there is no designation of a partnership representative in effect, "the Secretary may select any person as the partnership representative." Accordingly, if the designation of the partnership representative is terminated for any reason, and the partnership fails to designate a successor partnership representative within the period of time directed by the Court, there is no longer a designation in effect and, under section 6223, it is the Secretary who may select the partnership representative.

We also recommend that Rule 255.6(b) be modified to clarify that any removal of the partnership representative by the Court is only a removal for purposes of the year or years at issue in the case and has no effect on that person's status as the partnership representative for any year not before the Court. Therefore, we recommend that Rule 255.6(b) be modified to read as follows:

(b) After the Commencement of a Case: After notice and opportunity to be heard, (1) the Court may for cause remove a partnership representative for any year or years covered by the notice of final partnership adjustment upon which the case is based, and (2) if a partnership representative's status is terminated for any reason, including removal by the Court, the partnership, through its

partners, shall designate a new partnership representative in accordance with the requirements of section 6223 and the regulations thereunder within such period as the Court may direct. If the partnership fails to designate a new partnership representative within such period, the Secretary may select a partnership representative within such period as the Court may direct.

We appreciate this opportunity to comment on the interim and proposed amendments to the Court's Rules of Practice and Procedure. Please do not hesitate to contact me if you desire any additional information or wish to discuss our comments and recommendations in further detail.

Sincerely,

A handwritten signature in black ink that reads "Drita Tonuzi". The signature is written in a cursive, flowing style.

Drita Tonuzi
Deputy Chief Counsel
(Operations)

cc: Joshua D. Odintz
Chair, Court Practice & Procedure Committee
ABA Section of Taxation
Baker McKenzie
815 Connecticut Avenue, N.W.
Washington, DC 20006